

110TH CONGRESS
2D SESSION

S. 3131

To amend the Commodity Exchange Act to ensure the application of speculation limits to speculators in energy markets, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 12, 2008

Mrs. FEINSTEIN (for herself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Agriculture, Nutrition, and Forestry

A BILL

To amend the Commodity Exchange Act to ensure the application of speculation limits to speculators in energy markets, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Oil Speculation Control
5 Act of 2008”.

6 **SEC. 2. DEFINITION OF INSTITUTIONAL INVESTOR.**

7 (a) DEFINITION.—Section 1a of the Commodity Ex-
8 change Act (7 U.S.C. 1a) is amended—

1 (1) by redesignating paragraphs (22) through
 2 (34) as paragraphs (23) through (35), respectively;
 3 and

4 (2) by inserting after paragraph (21) the fol-
 5 lowing:

6 “(22) INSTITUTIONAL INVESTOR.—The term
 7 ‘institutional investor’ means a long-term investor in
 8 financial markets (including pension funds, endow-
 9 ments, and foundations) that—

10 “(A) invests in energy commodities as an
 11 asset class in a portfolio of financial invest-
 12 ments; and

13 “(B) does not take or make physical deliv-
 14 ery of energy commodities on a frequent basis,
 15 as determined by the Commission.”.

16 (b) CONFORMING AMENDMENTS.—

17 (1) Section 13106(b)(1) of the Food, Conserva-
 18 tion, and Energy Act of 2008 is amended by striking
 19 “section 1a(32)” and inserting “section 1a”.

20 (2) Section 402(d)(1)(B) of the Legal Certainty
 21 for Bank Products Act of 2000 (7 U.S.C.
 22 27(d)(1)(B)) is amended by striking “section
 23 1a(33)” and inserting “section 1a”.

1 **SEC. 3. INSPECTOR GENERAL.**

2 Section 2(a) of the Commodity Exchange Act (7
3 U.S.C. 2(a)) is amended by adding at the end the fol-
4 lowing:

5 “(13) INSPECTOR GENERAL.—

6 “(A) OFFICE.—There shall be in the Com-
7 mission, as an independent office, an Office of
8 the Inspector General.

9 “(B) APPOINTMENT.—The Office shall be
10 headed by an Inspector General, appointed in
11 accordance with the Inspector General Act of
12 1978 (5 U.S.C. App.).

13 “(C) COMPENSATION.—The Inspector
14 General shall be compensated at the rate pro-
15 vided for level IV of the Executive Schedule
16 under section 5315 of title 5, United States
17 Code.

18 “(D) ADMINISTRATION.—The Inspector
19 General shall exert independent control of the
20 budget allocations, expenditures, and staffing
21 levels, personnel decisions and processes, pro-
22 curement, and other administrative and man-
23 agement functions of the Office.”.

1 **SEC. 4. TRADING PRACTICES REVIEW WITH RESPECT TO**
 2 **INDEX TRADERS, SWAP DEALERS, AND INSTI-**
 3 **TUTIONAL INVESTORS.**

4 Section 4 of the Commodity Exchange Act (7 U.S.C.
 5 6) is amended by adding at the end the following:

6 “(e) TRADING PRACTICES REVIEW WITH RESPECT
 7 TO INDEX TRADERS, SWAP DEALERS, AND INSTITU-
 8 TIONAL INVESTORS.—

9 “(1) REVIEW.—

10 “(A) IN GENERAL.—Not later than 30
 11 days after the date of enactment of this sub-
 12 section, the Commission shall carry out a review
 13 of the trading practices of index traders, swap
 14 dealers, and institutional investors in markets
 15 under the jurisdiction of the Commission—

16 “(i) to ensure that index trading is
 17 not adversely impacting the price discovery
 18 process;

19 “(ii) to determine whether different
 20 practices or regulations should be imple-
 21 mented; and

22 “(iii) to gather data for use in pro-
 23 posing regulations to limit the size and in-
 24 fluence of institutional investor positions in
 25 commodity markets.

“(B) EMERGENCY AUTHORITY.—For the 60-day period described in subparagraph (A), in accordance with each applicable rule adopted under section 5(d)(6), the Commission shall exercise the emergency authority of the Commission to prevent institutional investors from increasing the positions of the institutional investors in—

“(i) energy commodity futures; and

“(ii) commodity future index funds.

“(2) REPORT.—Not later than 30 days after the date described in paragraph (1)(A), the Commission shall submit to the appropriate committees of Congress a report that contains recommendations for such legislation as the Commission determines to be necessary to limit the size and influence of institutional investor positions in commodity markets.”.

SEC. 5. BONA FIDE HEDGING TRANSACTIONS OR POSITIONS.

Section 4a(c) of the Commodity Exchange Act (7 U.S.C. 6a(c)) is amended by striking “(c) No rule” and inserting the following:

“(c) BONA FIDE HEDGING TRANSACTIONS OR POSITIONS.—

1 “(1) DEFINITION OF BONA FIDE HEDGING
2 TRANSACTION OR POSITION.—The term ‘bona fide
3 hedging transaction or position’ means a transaction
4 or position that represents a hedge against price risk
5 exposure relating to physical transactions involving
6 an energy commodity.

7 “(2) APPLICATION WITH RESPECT TO BONA
8 FIDE HEDGING TRANSACTIONS OR POSITIONS.—No
9 rule”.

10 **SEC. 6. SPECULATION LIMITS RELATING TO SPECULATORS**
11 **IN ENERGY MARKETS.**

12 Section 4a of the Commodity Exchange Act (7 U.S.C.
13 6a) is amended by adding at the end the following:

14 “(f) SPECULATION LIMITS RELATING TO SPECU-
15 LATORS IN ENERGY MARKETS.—

16 “(1) DEFINITION OF SPECULATOR.—In this
17 subsection, the term ‘speculator’ includes any insti-
18 tutional investor or investor of an investment fund
19 that holds a position through an intermediary broker
20 or dealer.

21 “(2) ENFORCEMENT OF SPECULATION LIM-
22 ITS.—The Commission shall enforce speculation lim-
23 its with respect to speculators in energy markets.”.

1 **SEC. 7. LARGE TRADER REPORTING WITH RESPECT TO**
 2 **INDEX TRADERS, SWAP DEALERS, AND INSTI-**
 3 **TUTIONAL INVESTORS.**

4 Section 4g of the Commodity Exchange Act (7 U.S.C.
 5 6g) is amended by adding at the end the following:

6 “(g) LARGE TRADER REPORTING WITH RESPECT TO
 7 INDEX TRADERS, SWAP DEALERS, AND INSTITUTIONAL
 8 INVESTORS.—

9 “(1) IN GENERAL.—Each recordkeeping and re-
 10 porting requirement under this section relating to
 11 large trader transactions and positions shall apply to
 12 index traders, swaps dealers, and institutional inves-
 13 tors in markets under the jurisdiction of the Com-
 14 mission.

15 “(2) PROMULGATION OF REGULATIONS.—As
 16 soon as practicable after the date of enactment of
 17 this subsection, the Commission shall promulgate
 18 regulations to establish separate classifications for
 19 index traders, swaps dealers, and institutional inves-
 20 tors—

21 “(A) to enforce the recordkeeping and re-
 22 porting requirements described in paragraph
 23 (1); and

24 “(B) to enforce position limits and position
 25 accountability levels with respect to energy com-
 26 modities under section 4a(f).”.

1 **SEC. 8. INSTITUTIONAL INVESTOR SPECULATION LIMITS.**

2 (a) CORE PRINCIPLES APPLICABLE TO SIGNIFICANT
 3 PRICE DISCOVERY CONTRACTS.—Section
 4 2(h)(7)(C)(ii)(IV) of the Commodity Exchange Act (7
 5 U.S.C. 2(h)(7)(C)(ii)(IV)) is amended by inserting after
 6 “speculators” the following: “(including institutional in-
 7 vestors that do not take delivery of energy commodities
 8 and that hold positions in energy commodities through
 9 swaps dealers or other third parties)”.

10 (b) CORE PRINCIPLES FOR CONTRACT MARKETS.—
 11 Section 5(d)(5) of the Commodity Exchange Act (7 U.S.C.
 12 7(d)(5)) is amended by inserting after “speculators” the
 13 following: “(including institutional investors that do not
 14 take delivery of energy commodities and that hold posi-
 15 tions in energy commodities through swaps dealers or
 16 other third parties)”.

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